UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Indianapolis, IN

NORTH MANCHESTER FOUNDRY, INC.
Employer

and Case 25-RC-9833

UNITED STEELWORKERS OF AMERICA,
Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time production, maintenance, and plant clerical employees employed by the Employer at its North Manchester, Indiana facility, including grinding room clerical employees, production

schedulers and customer service representatives; BUT EXCLUDING all employees of the heat treat department, janitors, truck drivers, office clerical employees, confidential employees, guards and supervisors as defined in the Act.

The Employer, North Manchester Foundry, Inc., manufactures gray and ductile iron castings at its North Manchester, Indiana foundry. The unit found appropriate herein is in accord with the agreement of the parties and consists of approximately 132 employees for whom no history of collective bargaining exists.[1]

A dispute exists between the parties, however, concerning the proper unit placement of three groups of employees: three positions which exist within the Employer's pattern shop; two positions in its laboratory; and eight positions in its south core room.[2] The Employer seeks to exclude these positions from the agreed-upon unit on grounds that employees in these three areas lack a community of interest with unit members. The Petitioner declined to agree to these exclusions, thereby implicitly urging their inclusion within the unit.

The Employer's manufacturing complex consists of three buildings, the largest of which houses its main foundry operations, including the following production areas: a core room, eight molding areas, a melt area, a cleaning and grinding area, a final inspection area, shipping and maintenance departments, and a customer service department. The main foundry also houses the Employer's laboratory and an office used by foundry supervisors. Across Wabash Road from the foundry is a substantially smaller building which houses the Employer's administrative office, the pattern shop and heat treat department. Approximately one quarter of a mile south of the main foundry the Employer leases space in a building which houses its south core room.

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[1] The parties stipulated at hearing that an appropriate unit should include all production and maintenance employees whose primary work location is the main foundry building. In addition, they agreed that three plant clerical positions should be included in the unit. These positions currently consist of one grinding room clerical position, one production scheduler and two customer service representatives. The parties further stipulated to exclude from any unit found appropriate herein, three employees who work in the heat treat department, the Employer's sole truck driver and two janitors.

[2] The pattern shop positions are currently occupied by employees Cam Van Yo, Johnny Wheeler and Richard Williams. The laboratory employees are Vicky Thompson ad Kevin Butler, and the south core room employees are Robert Jones, James Shane, Lora Shane(s), Harold Warford, Diane Hall, Lora France, Marcia Kline and Pauline Codill.

The sole witness at the hearing herein was the Employer's Senior Vice President and General Manager who has been employed by the foundry 12 years. He described the job functions and characteristics of the three groups of disputed positions. The pattern shop consists of three employees and one supervisor who oversees no other employees. According to the General Manager, the three employees are not pattern makers; rather, they modify and add features to patterns acquired from outside vendors, and repair damaged patterns. One pattern shop employee also builds and repairs wooden "flasks" which are essentially wooden boxes in which molds are placed. The employee also builds boards on which molds rest while they move down a conveyor system and builds "squeeze boards" which are attached to molds. Virtually all of the work hours of the pattern shop employees are spent in their shop with minimal contact with employees who work in the main foundry. Such contact appears limited to setup employees from the main foundry who transport the patterns between the shop and foundry where they are used to make casting cores and impressions of castings. Scheduled work hours for the pattern shop are 6:00am to 2:30pm, Monday through Friday, although one employee's hours have been modified to accommodate special familial circumstances.

The laboratory is located in the main foundry building between a production area and the foundry's office which houses supervisors' work areas. The two laboratory employees work different hours, one from 6:00am to 2:30pm and the other from 9:30pm to 6:00am. They take samples of iron from the furnace and test the chemical composition of the samples to insure their compliance with customer specifications. They report the results of their tests to furnace operators either in person or telephonically. The laboratory employees also label and package test bars of iron which are taken to a private laboratory for analysis. The employees use specialized tools such as a spectrometer, microscope and polisher, and according to the Employer, special training is necessary to perform laboratory functions, although the precise nature of that training (whether on-the-job or in a formalized classroom setting) is not indicated.

As mentioned above, the south core room is located in a leased building south of the main foundry. Its eight production employees perform functions similar to those performed by the core room employees who work in the main foundry building and whom the parties have stipulated should be included in the unit found appropriate herein. The supervisor of the south core room does not oversee any other employees. The south core room employees make cores which are used to make molds primarily for products used by the maritime industry. The core room in the main foundry also manufactures some cores for maritime products. The

south core room employees also assemble cores purchased from outside vendors. The record indicates that although their contact with employees of the pattern shop and laboratory is limited, south core room employees experience interchange and regular contact with those core room employees who work in the main foundry. Employees from each area substitute in the absence of the other and core room employees have trained employees in the south core room.

After the Petitioner agreed to exclude the three heat treat employees, two janitors and truck driver from its proposed unit, the hearing was closed because these exclusions reduced the number of disputed positions to 13, which is 10% of the number of employees in the stipulated unit. The evidence in respect to the characteristics of the three disputed groups of employees is not sufficient to determine whether they share a community of interest with members of the agreed-upon unit. Although the employees in each of the disputed work areas have different immediate supervision, it is not known whether they share common secondary or tertiary supervision. The evidence indicates that the south core room employees perform functions similar if not identical to those performed by employees in the core room of the main foundry, and possess similar skills. The record also indicates that employee interchange and contact between the employees of the two core rooms is regular and frequent. While contact between employees of the pattern shop and main foundry is less frequent, contact between the laboratory employees and foundry workers occurs daily. Indeed, satisfactory results of the laboratory tests are a condition precedent to the continued pouring of castings. Additionally, evidence indicates that all of the functions performed by the pattern shop, laboratory and south core room are integrally related to the production process. In addition, the evidence suggests that employees in the three disputed groups work the same hours as members of the stipulated unit and there is no evidence that the Employer's policies, work rules, wages or economic benefits differ between the disputed and undisputed employees. Therefore, contrary to the Employer's assertion, it cannot be concluded with reasonable certainty that the employees of the laboratory, pattern shop and south core room lack a community of interest with members of the stipulated unit, and should therefore be excluded from the unit. Nor, however, can it be concluded that any of the three disputed groups share a sufficient community of interest with unit members to warrant their inclusion.

Since the three disputed groups represent 10% of the unit found appropriate herein, in order to effectuate the purposes of the Act through expeditiously providing for a representation election, the laboratory, south core room and pattern shop employees shall be permitted to vote at the election ordered herein, subject to challenge. Their

eligibility to vote shall be resolved in post-election proceedings if their votes are determinative of the outcome of the election.

In a Motion to Reopen the Record the Employer asserts that an agent of the Board engaged in a conversation with the Petitioner's representative during a recess of the hearing which may have been a contributory factor in causing the Petitioner to agree to exclude the three heat treat employees when earlier in the hearing it had urged their inclusion in the stipulated unit. Their exclusion reduced the number of disputed positions to 10% of the unit. In addition, the Employer objects to the hearing officer's closure of the record without permitting the Employer to place evidence into the record concerning the job functions and other characteristics of employees within the stipulated unit for purposes of comparison with the job functions and characteristics of the disputed employees. Assuming, *arguendo,* that an agent of the Board's discussion with Petitioner was influential in getting the Petitioner to alter its position in respect to the unit placement of the heat treat employees, which resulted in the hearing officer's closure of the record because the number of disputed positions comprised only 10% of the unit, such conduct did not cause prejudice to the Employer. The ruling of the hearing officer closing the record is therefore affirmed. The Board strives to expedite the holding of elections so that the wishes of employees may be determined without unnecessary delay, Bekins Moving & Storage Co. of Florida, Inc., 211 NLRB 138 (1974) [reversed on other grounds, Handy Andy, Inc., 228 NLRB 447, 448 (1977)]. To litigate the status of contested positions which comprise a minor segment of a bargaining unit herein prior to the election would unnecessarily delay the election under circumstances when the voting eligibility of the contested positions is not yet ripe for consideration. Only if the contested positions become determinative of the election's outcome is a hearing necessary. Nor does the absence of a pre-election determination of the contested positions deny the Employer due process since it will receive a hearing on the issue if the contested positions prove determinative of the election's outcome. Moreover, contrary to pre-election hearings which are fact-finding and not adversarial, in an adversarial post-election hearing the Board shall have the benefit of making credibility resolutions while the litigants' rights to procedural due process are fully protected, Bekins Moving & Storage, *Id* at 141. Accordingly, employees who occupy positions in the pattern shop, the laboratory, and the south core room shall be permitted to cast ballots in the election ordered herein subject to challenge, and the Employer's motion to reopen the record is denied.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned, among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the United Steelworkers of America.

LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision. North Macon Health Care Facility, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 25's Office, Room 238, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Indianapolis, Indiana 46204-1577, on or before **February 26, 1999**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to

comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street. N.W., Washington, DC 20570. This request must be received by the Board in Washington by March 5, 1999.

DATED AT Indianapolis, Indiana, this 19th day of February , 1999.

/s/ Roberto G. Chavarry

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